

Application No. 10/806,070  
Filed: March 22, 2004  
TC Art Unit: 3644  
Confirmation No.: 1513

REMARKS

In the most recent Office Action, claims 1-6, 12, 15, 17-19, 21-38, 40 and 42-43 were pending and under examination. Claims 23-26, 31-38 and 40 are withdrawn from consideration. Claims 1-6, 12, 15, 17-19, 21-22, 27-30 and 42-43 are rejected.

In response, claims 1-6, 12, 15, 17-19, 21-22, 27-30 and 42 are amended. New claim 44 is added. Accordingly, claims 1-6, 12, 15, 17-19, 21-38, 40 and 42-44 are pending in the present application. No new matter is added.

Applicant responds to the comments in the Office Action as follows.

Claim Rejections - 35 U.S.C. § 112

The Office Action states that claims 2, 18, 27 and 29 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. In particular, the Office Action states that it is not clear in the specification how "a portion of the inner box projects through one of the upper or lower sides of the second inner box holder," as is recited in claim 2. In addition, the Office Action states that it is not clear how "the inner box is configured to extend substantially outside of the first inner box holder in the second relative

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position," as is recited in claims 18 and 27. The rejection is respectfully traversed.

On page 7, lines 28-29 of the specification, in reference to Fig. 12, is it stated that "the inner box 103 here extends substantially within the inner box holder 104." In addition, on page 8, lines 9-15, in reference to Fig. 13, the specification states that the assembly can be achieved by placing the inner box 103 in the inverted inner box holder 104, and subsequently pulling up the inner box holder 104 along side the inner box 103. In each of these assemblies, "a portion of the inner box projects through one of the upper or lower sides of the second inner box holder," as was recited in claim 2. Claim 2 is amended in the present response to recite a first end opening of a second support frame that is shaped to permit portions of the container to pass through the first end opening. Applicant submits that this recitation in claim 2 is amply supported in the specification, as discussed above, as well as being illustrated in the drawings of the present application.

With respect to claim 18 and 27, the same relevant portions of the specification cited above describe the configuration of the assemblies illustrated in Figs. 12 and 13. Applicant submits that these recitations and illustrations in the figures clearly

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indicate how the inner box is configured to extend substantially outside of the first inner box holder in the second relative position, as was recited in claims 18 and 27. Claims 18 and 27 are amended to recite a container and a first support frame in substitute for the inner box and first inner box holder, respectively, to more clearly describe the subject matter of the invention.

Because the specification describes the claimed subject matter with a reasonable degree of certainty to enable one of ordinary skill in the art to make and/or use the invention, Applicant respectfully submits that the rejection of claims 2, 18, 27 and 29 under 35 U.S.C. § 112, first paragraph, is overcome, and respectfully requests that it be reconsidered and withdrawn.

The Office Action states that claims 2, 18, 27 and 29 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention. In particular, the Office Action states that it is not clear in the specification how "a portion of the inner box projects through one of the upper or lower sides of the second inner box holder," as was recited in claims 2 and 29. In addition, the Office Action states that it is not clear in the specification how "the inner

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box is configured to extend substantially outside of first inner box holder in the second relative position," as was recited in claims 18 and 27. Applicant respectfully traverses the rejection.

As discussed above, the specification provides a replete description of the flower box assemblies illustrated in Figs. 12 and 13. As discussed above, Fig. 13 illustrates a second support frame (second inner box holder) in an inverted position, in which the container projects through one of the openings of the second support frame. The specification refers to Fig. 1 to illustrate assemblies in which a first support frame and a second support frame are used in conjunction with the container to provide an assembly (page 7, lines 20-24). In addition, on page 1 of the specification, the flower box assembly is described with a second inner box holder being in an inverted position having a downwardly directed upper side engaging an upper side of the first inner box holder.

Accordingly, Applicant respectfully submits that the specification clearly describes a flower box assembly in which a portion of the container can pass through one of the openings of the second support frame, as recited in claims 2 and 29.

Regarding claims 18 and 27, the above discussion is believed to be pertinent to show that the specification describes the

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container (inner box) being configured to extend substantially outside of the first support frame (first inner box holder) in a second relative position, particularly with reference to Figs. 1 and 12-13.

Accordingly, Applicant respectfully submits that claims 2, 18, 27 and 29 are definite, and recite subject matter with a reasonable degree of certainty to permit one of ordinary skill in the art to understand the scope of the claimed invention. Applicant therefore submits that the rejection of claims 2, 18, 27 and 29 under 35 U.S.C. § 112, second paragraph, is overcome, and respectfully requests that it be reconsidered and withdrawn.

Claim Rejections - 35 U.S.C. § 102

The Office Action states that claims 1, 2, 4-6, 12, 17-18, 21, 28-30 and 42-43 are rejected under 35 U.S.C. § 102(b) as being anticipated by Japanese Publication No. 01-108926 (JP '926). In particular, the Office Action states that JP '926 discloses each and every element recited in the claims rejected under 35 U.S.C. § 102(b). Applicant respectfully traverses the rejection.

Claim 1 of the present application recites a first support frame having an opening with:

a dimension and a shape in relation to the  
rim bottom and sidewalls of the container to

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permit the bottom and sidewalls of the container to pass through the first end opening and prevent the rim from passing through the first end opening.

Applicant submits that this feature is not disclosed in JP '926.

The disclosure by JP '926 appears to show a tray 1 that can be assembled with a wall section 2. Applicant first notes that neither tray 1 nor wall section 2 have a closed end suitable for containing and holding water. As shown in Fig. 1 of JP '926, and as recited in the abstract, holes are bored through a bottom and sidewall parts of tray 1 and wall section 2. In particular, reference designator 4 points to holes bored in a bottom of tray 1 illustrated in Figure 1 of JP '926. Such a configuration is in keeping with the intended purpose and construction of the trays arranged in tank II of JP '926, to permit the culture solution in tank II to pass into tray 1, which is apparently filled with a culture soil and sowed with seeds to grow plants.

In contrast, claim 1 of the present application calls for a container with at least partially closed sidewalls adjoining a closed bottom that is configured to be able to hold water. JP '926 does not disclose a closed bottom and at least partially

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closed sidewalls adjoining the bottom capable of holding water, as is recited in claim 1 of the present application.

In addition, JP '926 appears to show a wall section 2 that can be coupled with a tray 1 in Figure 3. However, it is not clear, and apparently not contemplated in JP '926 to have tray 1 be placed inside either opening of wall section 2. Being able to place a container that can hold water within a support frame is one of the key features of the invention recited in claim 1. Accordingly, the recitation of claim 1 of the present application described above cannot be found or inferred in the disclosure of JP '926.

Therefore, claim 1 recites a number of elements that are not disclosed by JP '926. Because the cited prior art reference of JP '926 does not disclose all the claim limitations of claim 1, either explicitly or inherently, Applicant respectfully submits that the rejection of claim 1 under 35 U.S.C. § 102(b) over JP '926 is overcome, and respectfully requests that it be reconsidered and withdrawn.

Claims 2, 4-6, 12, 17-18, 21 and 28-30 depend upon and further limit claim 1, and should be allowable for all the reasons that claim 1 is allowable, and also because of the further recitations found in those dependent claims. Accordingly,

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Applicant respectfully submits that the rejection of claims 2, 4-6, 12, 17-18, 21 and 28-30 under 35 U.S.C. § 102(b) is overcome, and respectfully requests that it be reconsidered and withdrawn.

Claim 42 of the present invention recites:

a container holder having a first open end and a second open end opposed to the first open end, the first open end having an engagement structure being cooperative with the fastener component to detachably secure the container and the container holder as assembled together in either of a first orientation in which the closed end and sidewall extend substantially within the container holder, or as assembled together in a second orientation in which the closed end and sidewall extend substantially outside and away from the container holder.

These elements are not disclosed by JP '926. As discussed above, the tray 1 of JP '926 does not have a closed end as is recited in claim 42. Furthermore, the wall section 2 shown in JP '926 does not have any structure to detachably secure the container and the container holder together in either of two orientations, in which the container is assembled to be within the container holder, or assembled such that the container extends outside of the container holder. JP '926 appears to only show a configuration for wall section 2 and tray 1 in which wall section 2 is placed within tray 1, and there is no disclosure of tray 1 being placed within wall section 2, especially in a detachably

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secure relationship. The two orientations recited in claim 42 are clearly illustrated in Figs. 12 and 13 of the present application and described in the associated portion of the specification. Accordingly, Applicant respectfully submits that claim 42 recites elements that are not disclosed in JP '926, either explicitly or inherently. Because JP '926 does not disclose all the claim limitations of claim 42, Applicant respectfully submits that the rejection of claim 42 under 35 U.S.C. § 102(b) over JP '926 is overcome, and respectfully requests that it be reconsidered and withdrawn.

Claim 43 depends upon and further limits claim 42, and should be allowable for all the same reasons claim 42 is allowable, and also because of the further limitations recited in claim 43. Accordingly, Applicant respectfully submits that the rejection of claim 43 under 35 U.S.C. § 102(b) is overcome, and respectfully requests that it be reconsidered and withdrawn.

Claim Rejections - 35 U.S.C. § 103

The Office Action states that claims 3, 19 and 27 are rejected under 35 U.S.C. § 103(a) as being unpatentable over JP '926. In particular, the Office Action states that while JP '926 discloses all the claimed limitations except for a second inner

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box holder having a different size or shape from a first inner box holder, the same would have been obvious to one of ordinary skill in the art.

In addition, the Office Action states that while JP '926 discloses all the claimed limitations except for an engaging force greater than a weight of the first inner box holder, the same would have been obvious to one of ordinary skill in the art. Applicant respectfully traverses the rejection.

Applicant first notes that claims 3, 19 and 27 depend upon and further limit claim 1, which is believe to be patentable over JP '926, for the reasons discussed above with respect to the rejection under 35 U.S.C. § 102(b). By depending upon a claim believed to be allowable, claims 3, 19 and 27 should be allowable for the same reasons as the independent claim, and also because of the further limitations recited in the dependent claims.

In addition, the recitation in claims 19 and 27 stating that the engaging force between the container and the first support frame is greater than a weight of the first support frame should not be considered obvious to one having ordinary skill in the art at the time the invention was made. An important aspect of the present invention recited in claims 19 and 27 calls for a flower box assembly to be configured as illustrated in Fig. 13. The

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assembly in Fig. 13 cannot be achieved unless the engaging force between the container and the first support frame is greater than a weight of the first support frame. It is the engaging force that supports the first support frame on the container in the configuration of the flower box assembly illustrated in Fig. 13. As discussed above, the tray and wall section illustrated in JP '926 cannot be configured in such a flower box assembly as illustrated in Fig. 13. Claim 1, upon which claims 19 and 27 depend, recites the definite and specific structure of an opening in the first support frame having a dimension and shape to pass the bottom and side walls of the container, and prevent the rim of the container from passing. JP '926 does not disclose or suggest such a construction, because JP '926 is silent with respect to whether any part of tray 1 can fit within wall section 2. Indeed, such a construction of the tray and wall section shown in JP '926 would defeat the intended purpose of the tray and wall section, since the culture solution in tank II would not be able to reach the culture soil and seeds in tray 1, since tray 1 would be suspended above tank II by wall section 2.

Applicant further submits that the recitation of the engaging force being greater than a weight of the first support frame is critical to the functioning of the flower box assembly, if a

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configuration such as that illustrated in Fig. 13 of the present application is to be maintained. While the engaging force is not critical to other configurations of the flower box assembly, such as the configurations illustrated in Fig. 1 or Fig. 12, the flower box assembly illustrated in Fig. 13 relies on the engaging force found in claims 19 and 27. As stated in the specification, the first support frame can be pulled up along side the container to permit the flower box assembly to be easily carried while protecting the contents of the flower box assembly. Accordingly, Applicant respectfully submits that it would not be obvious or easily determined through routine experimentation to achieve the engaging force recited in claims 19 and 27.

Because claims 19 and 27 recite limitations that are not taught or suggested in the cited prior art reference of JP '926, and that are not obvious to one of ordinary skill, Applicant respectfully submits that the rejection of those claims under 35 U.S.C. § 103(a) is overcome, and respectfully requests that it be reconsidered and withdrawn.

The Office Action states that claim 15 is rejected under 35 U.S.C. § 103(a) as being unpatentable over JP '926 in view of Ramsay et al. (U.S. Patent No. 5,042,674). In particular, the Office Action states that while JP '926 does not disclose a

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toothed provision provided on the first inner box holder, the same would have been obvious to provide in view of the disclosure by Ramsay et al. Applicant respectfully traverses the rejection.

The disclosure of JP '926 calls for the tray 1 and wall section 2 to be configured to be placed in tank II while plants are being grown in tray 1 with wall section 2. If tray 1 and wall section 2 were to be configured to be stackable, any culture soil or seeds in tray 1 and wall section 2 would not receive any culture solution from tank II. Accordingly, Applicant submits that it would not be obvious to stack tray 1 and wall section 2 of JP '926 while plants are being grown within.

JP '926 also calls for a cover 3 to be placed on wall section 2 for shipping. If the tray 1, wall section 2 and cover 3 (tray I) were to be stacked with another tray I, the toothed provisions suggested by the Office Action would be embodied in the cover 3. Accordingly, one of ordinary skill in the art would not be led to modify JP '926 to have toothed provisions on wall section 2, in accordance with the disclosure of Ramsay et al. to arrive at the invention recited in claim 15. Indeed, if such a combination were made, the toothed provisions provided on wall section 2 would still not permit stacking of tray I due to the lack of toothed provisions in cover 3. Therefore, Applicant respectfully submits

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that it would not be obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of JP '926 and Ramsay et al. to arrive at the invention recited in claim 15. Applicant therefore respectfully submits that the rejection of claim 15 under 35 U.S.C. § 103(a) over JP '926 in view of Ramsay et al. is overcome, and respectfully requests that it be reconsidered and withdrawn.

Response to Arguments

The Office Action states on page 8 in paragraph 11 that is the prior art structure of JP '926 is capable of performing the intended use, then it meets the claim. This statement appears to be founded on the position that tray 1 of JP '926 is capable of holding water, which limitation is recited in claim 1 of the present application. However, as discussed above, tray 1 of JP '926 has holes bored in a bottom and sides, so that JP '926 is not a "container having a top rim, a closed bottom opposing the top rim and a plurality of at least partially closed sidewalls adjoining the bottom, the bottom and side walls being configured to be able to hold water." That is, claim 1 recites structure that is not found in the disclosure of JP '926. In addition, the tray 1 of JP '926 cannot perform the function by the structure

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recited in claim 1, namely, holding water. Accordingly, the prior art structure is not capable of performing the intended use of the container recited in claim 1, and does not meet the claim limitations.

The Office Action also states on pages 8 and 9 in paragraph 12, that JP '926 teaches a plurality of inner box holders (support frames) and inner boxes (containers) and that there will be a second support frame, within which can be accommodated the container. Applicant strongly contests this reading of the disclosure in JP '926, since JP '926 is completely silent with respect to accommodating tray 1 within wall section 2. In addition, the assembly disclosed in JP '926 will not function properly if tray 1 is attempted to be accommodated within wall section 2, since tray 1 will be suspended above, rather than immersed within the culture solution contained in tank II. Accordingly, Applicant submits that the Office Action reads subject matter into the cited prior art reference of JP '926 that it does not, in fact, contain.

#### Conclusion

New claim 44 is added to recite subject matter that Applicant has a right to claim. In particular, Applicant notes that the

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invention is not limited to having a press fit relationship, which recitation is removed from claim 1 to new claim 44.

In view of the above amendments and discussion, Applicant respectfully submits that the present application is now in condition for allowance, and earnestly solicits notice to that effect.

The Examiner is encouraged to telephone the undersigned attorney to discuss any matter that would expedite allowance of the present application.

Respectfully submitted,

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